



4312-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-NERI-14336; PPNENERIP0,PPMPRLE1Z.Y00000]

RIN 1024-AD95

Special Regulations; Areas of the National Park System, New River Gorge National River, Bicycling

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule authorizes bicycle use on new and existing multi-use trails and administrative roads within the New River Gorge National River. The rule is necessary because the National Park Service general regulation for bicycle use requires publication of a special regulation when new trails are constructed outside of developed areas.

DATES: The rule is effective [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

Administrative Background

The New River Gorge National River (NERI or park), a unit of the National Park System located in West Virginia, encompasses approximately 72,000 acres within a 53-mile corridor along the New River, extending from Hawks Nest State Park to Hinton. Congress established

NERI as a unit of the National Park System, largely in response to a 20-year grassroots effort organized by local community leaders. In 1978, President Jimmy Carter signed legislation establishing the park, “for the purpose of conserving and interpreting outstanding natural, scenic, and historic values and objects in and around the New River Gorge and preserving as a free-flowing stream an important segment of the New River in West Virginia for the benefit and enjoyment of present and future generations” (Pub. L. 95-625, sec. 1101, 1978). Subsequent legislation concerning the park states in its findings that NERI “has provided the basis for increased recreation and tourism activities in southern West Virginia due to its nationally recognized status and has greatly contributed to the regional economy” (Pub. L. 100-534, sec. 2(a)(1)-(2), 1988).

Park Planning

The park’s 1982 General Management Plan (1982 GMP) anticipated accommodating an expanding array of recreational pursuits, including off-road bicycling. It states that “[l]evels of use of new or unusual forms of recreation (such as hang gliding, rock climbing, dirt bicycling) will be managed to avoid problems of visitor safety, conflicts between uses, or resource impacts.”

The 1982 GMP also anticipated trail construction as funding became available. A subsequent park-wide Trail Development Plan (1993) recommended that the park develop a trail system emphasizing multiple uses, including hiking and bicycling. Both of these plans can be viewed by going to the NERI park planning website,

<http://www.nps.gov/neri/parkmgmt/planning.htm>, then following this path: click the link for “Environmental Assessment: Design and Build Two Stacked Loop Hiking and Biking Trail Systems...”; click the link to the Document List on the left; click the link to either the “1982

NERI General Management Plan” or the “1993 NERI Trail Development Plan”; then download the documents on their respective pages.

The park began developing a new, updated general management plan in 2005 to respond to changes in park boundaries, land acquisitions, and park and public needs and priorities that had occurred since the 1982 GMP was approved. The park’s updated 2010/2011 GMP and Environmental Impact Statement (2010/2011 GMP/EIS) process revealed substantial and consistent public support for authorizing bicycle use on trails during public scoping (February 2004 through October 2007) and public comment (January 13, 2010 through April 16, 2010).

The 2010/2011 GMP/EIS proposed that, after promulgation of the required special regulations and proper compliance with the National Environmental Policy Act (NEPA), bicycle use would be an appropriate use on new and existing trails. This would include bicycle use in frontcountry zones, in backcountry zones on single track trails, and on a limited basis on a variety of trail types in historic resource, river corridor, and park development zones. The Record of Decision (ROD) for the 2010/2011 GMP/EIS was signed, and the Notice of Availability was published in the **Federal Register** (77 FR 12877, March 2, 2012). The 2010/2011 GMP/EIS can be viewed by going to the NERI park planning website,

<http://www.nps.gov/neri/parkmgmt/planning.htm>, then following this path: click the link for “General Management Plan”; click the link to the Document List on the left; click the link to the “Draft General Management Plan and EIS/Draft Foundation Plan”; then download the documents at the bottom of the page (corrections to the 2010/2011 GMP/EIS are located in the “Abbreviated Final General Management Plan...”, also in the Document List).

As a result of the public support for bicycle use expressed early in the 2010/2011 GMP/EIS process, the park developed an Environmental Assessment (Trails EA) to evaluate the

impact of the construction of new trails and designation of new and existing park trails as routes for bicycle use. Public scoping for the Trails EA, which occurred from November 10, 2009 until January 15, 2010 (with a public focus group on November 10, 2009 and a public open house on December 8, 2009), confirmed there was overwhelming support for bicycle use on trails. Only one of approximately 400 scoping comments from residents of 32 states was opposed to bicycle use at NERI.

The Trails EA

The Preferred Alternative that became the NPS Selected Action upon approval of the Finding of No Significant Impact (FONSI) provided for the designation of some existing park trails and administrative roads as routes open to bicycle use, and for the construction and designation of three new trails for hiking and bicycle use by converting existing, abandoned roads into the Mud Turn, Panther Branch Connector, and Brooklyn Miner's Connector Trails. The Selected Action also provided for the development and construction of approximately 11 miles of new single track trail, called the Craig Branch Stacked Loop Trail System, and the development and construction of approximately 33 miles of new single track trail, called the Garden Ground Stacked Loop Trail System, for hiking and bicycle use.

The Trails EA, FONSI, and maps of these trails can be viewed by going to the NERI park planning website, <http://www.nps.gov/neri/parkmgmt/planning.htm>, then following this path: click the link for "Environmental Assessment: Design and Build Two Stacked Loop Hiking and Biking Trail Systems..."; click the link to the Document List on the left, click the link to either the "Environmental Assessment – Design and Build..." or the "Finding of No Significant Impact (FONSI)"; then download the documents on their respective pages.

Renaming of Trails

Since the FONSI was signed, several trail names in the Nuttallburg area of the park have changed. The Nuttall Mine Trail (an administrative road) was renamed the Headhouse Trail on public maps. The Nuttallburg Town Connector Trail was renamed the Nuttallburg Town Loop Connector Trail. The Nuttallburg Tipple Trail (also an administrative road) was divided into two segments on maps and renamed the Tipple Trail and the Seldom Seen Trail. The Keeneys Creek Trail has been renamed on some maps and documents as the Keeneys Creek Rail Trail, but older materials still call it the Keeneys Creek Trail.

Since its construction in summer of 2011, the Craig Branch Stacked Loop Trail System has been renamed the Arrowhead Trail. The final rule and future park maps will reflect this change, while prior documents (including the Trails EA and FONSI) refer to the Craig Branch Stacked Loop Trail System. Additionally, the Trails EA and FONSI refer to the stacked loop trails in the Craig Branch (now Arrowhead) and Garden Ground areas as “trail systems.” In the final rule, they are called the “Arrowhead Trail” and the “Garden Ground Stacked Loop Trail,” and are each treated as individual trails with interconnected segments.

A park map showing existing trails and administrative roads can be viewed by downloading the NERI Trails Guide from the following website:

<http://www.nps.gov/neri/planyourvisit/trails-guide.htm>.

Notice of Proposed Rulemaking

On August 27, 2012, the NPS published a Notice of Proposed Rulemaking for the designation of certain new trails, existing trails, and administrative roads in NERI as routes for bicycle use (77 FR 51733). The proposed rule was available for a 60-day public comment period, from August 27, 2012 through October 26, 2012.

Summary of and Responses to Public Comment

Comments were accepted through the mail, by hand delivery, and through the Federal eRulemaking Portal: <http://www.regulations.gov>. The NPS received 84 public comments during the comment period. Of these responses, 76 expressed support for the proposed rule. Three of the responses were from organizations, and the rest were from individuals. The two organizations that responded in support of the rule were the International Mountain Bicycling Association (IMBA) and the Roanoke Chapter of IMBA. The Public Employees for Environmental Responsibility (PEER) responded in opposition to the rule. Some of the individuals who responded identified themselves as being affiliated with the following organizations: IMBA, Mid-Atlantic Off Road Enthusiasts (MORE), Shenandoah Valley Bicycle Coalition (SVBC), Aarhus School of Architecture in Denmark, South Alabama Mountain Bike Association (SAMBA), Lower Arkansas Valley Mountain Biking Association (LAMBA), Greater Lynchburg Off-Road Cyclists, Pisgah Area Southern Off-Road Bicycle Association (SORBA), Winchester Wheelmen, and West Virginia Mountain Bike Association (WVMBA).

The 76 supporting comments expressed nine central themes:

1. Off-road bicycle use is environmentally appropriate and can contribute to protection of natural and cultural resources because many individuals who are avid off-road bicyclists voluntarily participate in trail maintenance, such as by cleaning up debris.
2. The regulation is consistent with nearly 30 years of planning and public involvement at NERI and embraces elements of the America's Great Outdoors Initiative launched by President Obama.
3. Allowing off-road bicycle use is consistent with other uses of NERI, such as climbing, hiking, kayaking, and whitewater rafting.

4. The authorization of off-road bicycle use in NERI will provide our nation's youth with new and exciting opportunities to participate in outdoor recreation activities. Providing younger members of society with off-road bicycling opportunities encourages them to develop a sense of pride and ownership in the trails they ride and maintain.

5. Allowing off-road bicycle use will make remote parts of NERI more accessible to some visitors who want to experience the full breadth of resources in the park.

6. Allowing off-road bicycle use is important for public health and contributes to healthy, active lifestyles.

One West Virginia resident remarked,

Mountain biking is a sport that can be enjoyed by people of all ages. I started mountain biking in 2007 in an attempt to continue enjoying the outdoors after surviving cancer. I'm a 55 year old who loves the outdoors and have hiked and camped since my childhood. Mountain biking is easier on my knees than hiking and is very enjoyable.

7. Off-road bicycling is an affordable activity that encourages positive outdoor experiences for families.

8. Allowing off-road bicycle use is an important draw for tourism and a catalyst for economic development in the New River Gorge area, as it attracts visitors from all over the country.

9. Bicycle trails in NERI have been the center point for partnerships and community development, such as the volunteer efforts of the Boy Scouts to build the Arrowhead Trail. If permanent access for bicycle use is allowed, these relationships will continue to flourish, building a sense of stewardship among trail users and park staff.

Some commenters supported the new bike rule but also asked questions for which the NPS has prepared responses. The questions are paraphrased and answered below:

1. *Question:* Will commercial tours be authorized on the new trails? If so, will there be licensing requirements for tour companies, and will private citizens be able to make complaints on the conduct of commercial groups?

Response: The Trails EA states, on page 35, “special events, special uses and large group use of all proposed trails would be subject to existing park policies and regulations.” Commercial bike tours require, and are subject to the conditions of, a NPS Commercial Use Authorization. Using the discretionary authority of 36 CFR 1.5 and 1.7 (Superintendent’s Compendium) the Superintendent has established size limits and guest-to-guide ratios for commercially led hiking and bicycling groups. There is also a daily park-wide limit on the number of commercially led hiking and bicycling groups that may use the park. The park will continue to use these authorities to adaptively manage commercially led groups to address issues such as user conflict. Citizens always have the ability to make complaints on the conduct of commercial groups or any other issues concerning visitor use or park management. For general complaints, contact the park headquarters at (304) 465-0508.

2. *Question:* Are there procedures in place to mitigate the impacts on bats if the wildlife habitat survey missed the presence of a bat nursery colony tree?

Response: The Trails EA includes mitigations to protect wildlife in Section 2.6.3, with a sub-section on mitigations specific to bats on page 37. The wildlife surveys, conducted by park staff or contractors and which have occurred or would occur along corridors within which the trail would be constructed, identify trees that are potentially important for bat habitat. The NPS understands that some trees would need to be removed for trail construction. Therefore, the NPS will inspect every tree proposed for removal that is greater than or equal to five inches diameter breast height (≥ 5 "DBH) for the presence of and evidence of use by bats. Trees that are identified

as active bat habitat would be avoided through a re-routing of the proposed trail. Trees that are free of evidence of active bat use would only be removed between November 15 and March 31 to minimize the impacts to locally-present bat species. The incorporation of this mitigation measure into the trail design and construction process should minimize the possibility of removing a tree used by bats. Because there is always the chance that a bat could be missed, no matter how thorough the survey and inspection processes, the park recommended a determination of *May Affect, but Not Likely to Adversely Affect* under Section 7 of the Endangered Species Act, indicating that unintended failure to detect roosting bats along proposed trail routes may have indirect adverse impacts on some bats. However, adverse impacts to federally listed bat species (Indiana and Virginia big-eared bats) are not anticipated. The U.S. Fish and Wildlife Service concurred with the park's recommendation.

3. *Question:* Will areas closest to colonized bat caves or mine shafts be monitored?

Response: NERI does not have any caves, but mine shafts throughout the park, whether or not they are located along or near trails, are already regularly monitored for bat activity.

4. *Question:* The first page of the FONSI states that the Boy Scouts of America (BSA) have requested to “bring about 2,000 volunteers to the park during June and July 2011 to construct new trails and participate in resource rehabilitation.” The time period has passed. Are the Boy Scouts still interested in volunteering or is more funding required? If the proposed regulation is approved, will there be funding to start the trail rehabilitation and stop the damage of prohibited activities?

Response: Over 1,400 youth volunteers from the BSA, Order of the Arrow, along with numerous supporting adult volunteers, came to NERI over four weeks in July 2011. They contributed about 80,000 hours of work, estimated at about a \$1.6 million dollar value, to

construct the 13 miles of trail formerly known as the Craig Branch Stacked Loop Trail System and subsequently renamed the Arrowhead Trail. As part of the trail construction project, the volunteers created barriers to close off access from the trail corridor to abandoned logging roads and off-road vehicle (ORV) tracks. After trail construction, there were a few reports of ORV riders attempting to use the trails, but the high level of authorized use the area now gets, coupled with the efforts of the local cycling community and NPS law enforcement staff, has effectively ended ORV use in the Craig Branch area. The BSA has expressed interest in volunteering for future multi-use (hike and bike) trail construction and maintenance projects in NERI.

5. *Question:* While I support off-road bicycling in NERI, I am concerned about the number of alternatives evaluated in the EIS. Why did you not include more alternatives that proposed less mileage of newly constructed trail? I feel that the No Action Alternative did not sufficiently account for this possibility.

Response: The No Action Alternative is meant to represent a continuation of current management to serve as a baseline for analysis of impacts to the human environment. The EIS and related ROD are associated with the park's new GMP, which approved the concept of trail development throughout the park and bicycle use on some trails, as appropriate. The EIS is an umbrella document addressing management concepts for the entire park and does not address specific trail or mileage alternatives.

The Trails EA is the site-specific document that analyzes the impacts of the development and use of each individual trail. The NPS is required to consider a range of action alternatives when project scoping produces substantively different management or development approaches to meeting a project's purpose and need. Therefore, we considered alternatives of developing new trails primarily on existing, though unsustainable routes and developing new trails that

generally avoided the use of existing routes. The latter was determined to be a more sustainable alternative that would cause fewer adverse impacts, such as erosion and stream sedimentation.

Of the eight comments received in opposition to the proposed regulation, three were submitted by one individual, two of which were identical. The NPS has addressed these concerns below.

1. Comment: The NPS has failed to adequately address safety concerns that are inherent in multi-use trails.

Response: Designating trails as routes open to bicycle use that have traditionally been used only by pedestrians is not expected to create unsafe conditions for trail users. Trails designated for bicycle use will be identified on maps, interpretive kiosks, and the park's website, and notices will be posted at trailheads and other appropriate locations. Trail users will be aware of the multiple uses occurring on those trails prior to using them. Additionally, the regulation includes provisions that bicyclists must yield to equestrians and pedestrians by slowing down to a safe speed, being prepared to stop, establishing communication, and passing safely. Failure to yield is prohibited, and violators may be ticketed. If a trail proves unsafe for multiple uses, the Superintendent may restrict or terminate bicycle use, including possible temporary closures if seasonal conditions make multiple uses inappropriate.

The Trails EA evaluated potential impacts to park resources and visitor experience that would result from opening certain existing trails to bicycle use. The NPS determined that bicycle use on those trails is appropriate and found that there will be no significant adverse impacts to resources or visitors as a result of that use.

2. Comment: Mountain biking in NERI is unnecessary and would contribute to deterioration of the environment.

Response: The NPS is mandated by Congress to conserve park resources and values and to provide for the enjoyment of the parks. If there is a conflict between the conservation provision and the enjoyment provision, conservation is predominant and controlling. Through the impact analysis in the Trails EA, the NPS determined that opening trails to bicycle use in NERI will have no significant impact on, and will not impair, park resources or values. The adverse impacts to park resources that would occur from bicycle use are expected to be slightly different than the impacts of pedestrian use, but of no greater magnitude. Protection of land and water resources in the park remains a top priority, and environmental conditions will be monitored and will not be allowed to deteriorate as a result of bicycle use on designated trails.

3. *Comment:* Under the Clean Water Act, the NPS may not authorize off-road bicycling through streams and other waterways.

Response: Off-road bicycle use in NERI will be regulated in accordance with all relevant federal laws. Where existing trails that would be opened to bicycle use cross an intermittent or perennial stream, a bridge elevates trail users out of the course of the stream. On newly constructed trails, mitigations are built into the construction plans that will minimize erosion and protect streams from sedimentation. Additionally, the Trails EA states that bridges or bottomless culverts will be used where trails cross perennial or intermittent streams, thus keeping all trail users out of the streambeds. The Trails EA further states that crossings of ephemeral channels would be minimized, and if an ephemeral stream crossing is unavoidable, trails will cross perpendicular to the channel direction, minimizing the amount of streambed affected by trail use. Streamflow characteristics and water quality are protected by these measures.

4. *Comment:* The NPS decision to authorize bike use in NERI may have been unduly influenced by special interest groups who solicit public comments in support of their agenda.

Response: The NPS issued press releases, purchased newspaper ads, and held a public meeting to solicit public comments on the Trails EA. Press releases were similarly issued to solicit public comment on the proposed rule. The public has had reasonable opportunities to comment on decisions regarding bicycle use. While any interest group is free to advertise public comment opportunities and solicit or advocate responses, the number of comments received from an interest group is not the controlling factor in our decision to designate trails for bicycle use. As stated above, resource conservation is a higher priority than use for management of NPS lands, and decisions are made accordingly.

5. *Comment:* The NPS authorization of off-road bicycle use at NERI does not allow the NPS enough control over irresponsible behavior by visitors and potential damages to park resources.

Response: Most organized mountain bike organizations subscribe to a “code of ethics” (e.g. New England Mountain Bike Association: A Mountain Bicyclist's Guide to Responsible Riding). However, it is our experience that most user groups have a small percentage of participants who fail to respect rules and other recreational users. Trail design and management at NERI is structured to encourage appropriate use of the trails and to provide a positive experience that makes trail users of all types want to stay within the designed trail tread. If any cyclists behave in an unsafe manner or harm park resources, they can be cited for regulatory violations and subject to criminal penalty, as can any other irresponsible park visitors.

Mountain bikers are not being offered unconditional access to park resources. The final rule and NPS policy include provisions for the Superintendent to adaptively manage, and if necessary, restrict or prohibit bicycle use on trails if such actions are required for resource protection or visitor safety.

6. *Comment:* The FONSI wrongly concluded that the construction of an estimated 40 miles of new bicycle trails in the Craig Branch and Garden Ground areas of NERI had only *insignificant* impacts. The Trails EA and the FONSI are seriously flawed because they failed to analyze the precedent-setting nature of the proposal to construct trails to provide mountain bicycle opportunities.

Response: In revisions to the service-wide regulations on bicycles found at 36 CFR 4.30 the NPS stated: “The National Park Service. . . believes that, with proper management, bicycling is an appropriate recreational activity in many park areas. In other areas, due to safety or other concerns, bicycling may not be appropriate” (77 FR 29927, July 6, 2012). Through the FONSI, the NPS determined for NERI only, that development of the new multi-use (hike and bike) trails referenced in the comment and opening certain existing trails to bicycle use are consistent with the protection of park resources and appropriate at NERI. The Trails EA does not set precedent for bicycle use in the NPS. Several other units of the NPS have developed multi-use (hike and bike) trails and opened them to bicycle use through the promulgation of special regulations. Additionally, the service-wide regulation on bicycle use (36 CFR 4.30) establishes a process for Superintendents to determine whether that use is or is not appropriate.

7. *Comment:* The NPS has failed to adequately analyze the impacts of bicycling because the 2010/2011 GMP postdates the Trails EA and does not cover bicycle trails.

Response: The 1982 GMP very generally provides for the management of off-road bicycle use in the park, and the 1993 Trail Development Plan emphasizes the creation of a trail system for multiple uses, including bicycling. The 2011 Trails EA tiered to the 1982 GMP as the only current management guidance for NERI at the time the FONSI was signed, but referenced public input from the 2010/2011 GMP development process and new information about the

existing conditions in the park's environment that became available through the development of the 2010/2011 GMP. The decision in the FONSI is consistent with both the 1982 GMP and the 2010/2011 GMP, which proposed (and the ROD approved) the concept of bicycle use on trails in NERI, the development of three stacked loop multi-use (hiking and biking) trail systems (including those in the Craig Branch and Garden Ground areas), and promulgation of a special regulation to authorize that use.

8. Comment: The studies cited in the Trails EA are scientifically flawed.

Response: Several of the studies specifically referenced in the full text of this comment were used to evaluate the potential impacts described in the impact analysis in the Trails EA. These reference materials are peer-reviewed and professionally published studies that provide the best available science on impacts of mountain biking. The impact analysis is specific to the park and the local ecosystem, and the studies in question provide general background information to the analysis to make it more robust and accurate. The impact analysis in the Trails EA produced a finding that no significant adverse impacts to the human environment would result from the proposed action, including opening the trails referenced in this rule to bicycle use.

Changes from the Proposed Rule

After consideration of the public comments, the park has decided that no substantive changes are necessary in the final rule, although some text was altered for clarity.

Compliance with Other Laws, Executive Orders, and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (RFA).

This rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*). This conclusion is based on the results of a cost/benefit and regulatory flexibility threshold analysis available for review on the NERI park planning website, <http://www.nps.gov/neri/parkmgmt/planning.htm>. The rule would not regulate small business. The rule would likely increase visitation at the park, which could generate benefits for small businesses in the local community through increased spending for goods and services.

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

(a) Does not have an annual effect on the economy of \$100 million or more. The July 2011 NPS economic analysis estimated that the addition of more than 100 miles of new trails will significantly improve NERI's attractiveness to bicyclists and thus drive additional economic activity.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will not impose

restrictions on local businesses in the form of fees, training, record keeping, or other measures that would increase costs.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act (UMRA).

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. The rule addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule only designates bicycle routes and manages bicycle use on those routes within the boundaries of the New River Gorge National River. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of NPS administered lands. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (Executive Order 13175 and Department Policy).

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

Throughout numerous past and current park planning processes, no expression of affiliation has been asserted with NERI by any tribal governments or organizations. Tribes that could potentially be affiliated were contacted individually during the development of the 2010/2011 GMP/EIS and no response was received. Copies of the Trails EA were sent to 14 Native American tribes who were identified as possibly having some interest in the park. The Chief of the Remnant Yuchi Nation was the only tribal representative to respond; he indicated that he was grateful to be acknowledged, that the NPS should continue the excellent work, and that he had no formal questions at this time.

Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the PRA is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA).

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the NEPA of 1969 is not required because the NPS reached a FONSI for the Selected Alternative. The Trails EA, the FONSI and other relevant documents and records of the public process may be viewed by going to the NERI park planning website, <http://www.nps.gov/neri/parkmgmt/planning.htm>.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A statement of Energy Effects is not required.

Drafting Information

The primary authors of this rule were Jamie Fields, NPS New River Gorge National River; Russel J. Wilson and C. Rose Wilkinson, NPS Regulations and Special Park Uses, Washington, DC.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements

In consideration of the foregoing, the NPS amends 36 CFR Part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k); Sec. 7.96 also issued under DC Code 10–137 (2001) and DC Code 50–2201 (2001).

2. In § 7.89 add paragraph (b) to read as follows:

§ 7.89 New River Gorge National River.

* * * * *

(b) *Bicycling.* (1) *Where may I ride a bicycle within New River Gorge National River?*

Bicycle use is allowed:

- (i) On park roads and in parking areas; and
- (ii) On administrative roads and trails authorized for bicycle use as listed in the following table.

Administrative Roads and Trails Authorized for Bicycle Use – North to South		
Hawks Nest Connector Trail	Keeneys Creek Rail Trail	Rend Trail
Fayetteville Trail	Headhouse Trail	Stone Cliff Trail
Park Loop Trail	Tipple Trail	Terry Top Trail
Timber Ridge Trail	Seldom Seen Trail	Garden Ground Stacked Loop Trail
Kaymoor Trail	Nuttallburg Town Loop Connector Trail	Little Laurel Trail
Craig Branch Trail	Brooklyn Mine Trail	Mud Turn Trail
Arrowhead Trail	Brooklyn Miner's Connector Trail	Glade Creek Trail
Long Point Trail (except 0.2 miles closest to Long Point Vista)	Southside Trail	Panther Branch Connector Trail

(2) *How will I know where these administrative roads and trails are located in the park?*

The administrative roads and trails where bicycle use is authorized are identified on maps located in the Superintendent's office, at park visitor centers, at interpretive kiosks, and on the park's website. Additional information about bicycling will also be posted at appropriate trailheads and other locations.

(3) *What requirements must I meet to ride a bicycle within New River Gorge National River?* (i) In addition to the applicable provisions in 36 CFR part 4, all bicyclists must yield to other trail users in the following manner:

- (A) A bicyclist must yield to an equestrian;
- (B) A bicyclist must yield to a pedestrian; and
- (C) A bicyclist travelling downhill must yield to a bicyclist travelling uphill.

(ii) Yielding the right of way requires slowing down to a safe speed, being prepared to stop, establishing communication, and passing safely.

(iii) Failure to yield is prohibited.

(4) *How will the Superintendent manage bicycle use where it is authorized?* The Superintendent may close park and administrative roads, parking areas and trails, or portions thereof, reopen the same, or impose conditions or restrictions for bicycle use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

(i) The Superintendent will provide public notice of all such actions through one or more of the methods listed in § 1.7 of this chapter.

(ii) Violating a closure, condition, or restriction is prohibited.

Rachel Jacobson
Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

November 20, 2013
Dated

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